

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-182421

DATE: July 3, 1975

MATTER OF: Value Engineering Company

DIGEST:

1. Procuring activity's rejection of protester's proposal as not the most advantageous to the Government was not improper even though protester's proposal was low as to estimated price since the contract was a time and material, labor hour type indefinite quantity contract and other factors were of greater significance than estimated price alone. However, agency should have made independent projection of protester's proposed costs.
2. Procuring activity's failure to discuss during negotiations qualifications of proposed personnel was justified in light of specifications in RFQ setting forth precise qualification requirements.
3. Although procuring activity failed to discuss with protester the reasonableness of its proposed labor rates, despite concerns that the rates were unrealistically low, award will not be disturbed since record shows that protester nevertheless was rated highest of all offerors on price proposal, and since relatively low rating as to personnel qualifications was partly justified by fact that designated personnel were not considered to have sufficient experience qualifications. Therefore, it appears that failure to discuss labor rates was not prejudicial to protester.

Request for Quotations (RFQ) No. N66314-74-Q-2692 was issued by the Naval Supply Center, Oakland, California, for a time and material, labor hour type indefinite quantity contract to provide logistics and engineering management support. Value Engineering Company, along with five other concerns, submitted a quotation in response to the solicitation.

The technical proposals were forwarded to the using activity for evaluation in accordance with the following criteria set forth in the solicitation:

"Selection of offerors for further discussions and negotiations will be made of firms which are within the competitive range based on the following evaluation factors and weight:

"The technical proposal must give clearly and in detail sufficient information to enable evaluation based on the factors listed below. Such factors will be weighted for evaluation in the following order:

- a. Government assessment of contractor's personnel qualifications
- b. Price
- c. Past Performance
- d. Technical Proposal
- e. Government Assessment of Contractor's Facility

"As part of the first stage of the evaluation process the Contracting Officer's representatives may visit the facilities of the offerors and otherwise check out factors a, b, and d prior to evaluation for competitive range. The second stage in the evaluation process will be limited to discussions and negotiations with those offerors determined by the Contracting Officer to be in the competitive range. During this stage the Contracting Officer reserves the right to attach the predominant weight to the factor of price and to so inform the offerors who are selected as in the competitive range; otherwise award will be made to the offeror in the competitive range whose offer is most advantageous to the Government, price and other listed factors considered, as shown above."
(Emphasis supplied.)

The solicitation also provided detailed descriptions of the type of information offerors should provide under evaluation factors a through e. The protester does not contend that the statement of evaluation criteria was insufficient.

As a result of the initial technical review, all offerors were requested to provide additional information and to clarify their proposals.

The revised proposals were reviewed and assigned a numerical score for each of the evaluation areas. Each evaluation factor had the following maximum value:

Government assessment of contractor's personnel qualifications	35
Price	25
Past Performance	20
Technical Proposal	15
Government assessment of contractor's facilities	5

On the basis of the evaluation factors other than price, the Sperry, Value Engineering and Global Marine proposals were rated on a scale of 0-75 as follows:

	<u>TECH PROPOSAL, PAST PERFORMANCE AND FACILITIES</u>	<u>PERSONNEL</u>	<u>TOTAL</u>
SPERRY SYSTEMS MANAGEMENT	30	31	61
VALUE ENGINEERING	33	19	52
GLOBAL MARINE ENGINEERING	21	17	38

The remaining offerors were rated substantially lower. Consideration of price did not alter the relative positions of the top three offerors.

The Contract Review Board recommended that the competitive range include Sperry Rand, Value Engineering, and Global Marine Engineering. Although the proposal of Global Marine Engineering was considered marginal, it was included within the competitive range in accordance with Armed Services Procurement Regulation (ASPR) § 3-805.2 (1974 ed.), which requires that "When there is doubt as to whether a proposal is within the competitive range that doubt shall be resolved by including it." These three offerors were advised of the opportunity to submit a best and final offer by September 6, 1974, and were further advised that award would be made "on the basis of the total points scored for the evaluation factors listed in * * * the Request for Quotations."

Upon receipt of the best and final offers from each offeror, the final evaluation was made. The total revised scores including technical and price points are as follows:

<u>Firm</u>	<u>Pers.</u>	<u>Past Perf.</u>	<u>Tech Prop.</u>	<u>Fac</u>	<u>Price</u>	<u>Total</u>
Sperry Rand Corp.	32	12	13	5	22	84
Value Engineering	20	15	14	4	25	78
Global Marine	17	9	8	4	18	56
Global Marine (Rev)					19	57

The using activity recommended Sperry Rand for award since it received the highest total composite score and submitted the best over-all proposal. The Contract Review Board concurred, and award was made to Sperry Rand.

Value Engineering protested the award on the grounds that Value Engineering was determined to be technically qualified by the contracting officer; was within the competitive range; and proposed a lower estimated price than Sperry Rand.

As can be seen from the above tabulation, Value Engineering would have received the highest over-all numerical rating were it not for its significantly lower score under "Government Assessment of Contractor Personnel Qualifications." This criterion was the most heavily weighted of the five set forth in the RFQ, and was accompanied by a very specific statement of the minimum required levels of skill, education and experience for the different personnel classifications. The Navy and the protester hold conflicting opinions as to the degree to which those minimum requirements were met by the protester's personnel.

It is not the function of our Office to evaluate proposals and we will not substitute our judgment for that of the contracting officials by making an independent determination as to which offeror in a negotiated procurement should be rated first and thereby receive the award. B-181696, October 8, 1974. The determination of whether a proposal is acceptable is a matter of administrative discretion which will be questioned by our Office only upon a clear showing of unreasonableness, favoritism, or a violation of the procurement statutes and regulations. B-179263, April 17, 1974; B-164552(1) and (2), February 24, 1969.

The record indicates that Value Engineering's proposal was evaluated in accordance with the criteria set forth in the evaluation plan. All the other firms were evaluated on the basis of these same criteria factors. Under this procedure, Sperry was selected for award. We do not find that the award was contrary to the evaluation criteria as set out in the RFQ. 53 Comp. Gen. 800 (1974).


Value Engineering has also emphasized the fact that it proposed a lower estimated price than did Sperry Rand. However, the contract to be performed is a time and material, labor hour type indefinite quantity contract, wherein the quality of the services performed is of predominant importance, as indicated by relative weights of the evaluation criteria in the RFQ. In this connection, we note that Value Engineering's proposal received the maximum point score for the category of Price. We also note, however, that an independent projection of the protester's proposed costs was not made. We believe such a projection should have been made. Tracor Jitco, Inc., B-182213, April 23, 1975.

Finally, Value Engineering argues that the Navy did not conduct meaningful discussions in that it did not point out to the protester during negotiations deficiencies in labor rates or in the determinative evaluation area of personnel qualifications. However, we think the Navy was not obligated to advise the protester that it was not in conformance with very specific requirements of the RFQ. We note, as one example, that the solicitation provided that possession of a bachelor's degree was not only a "minimum" but a "highly desirable" requirement for a Senior Logistician. Offerors were warned by the RFQ that one reason for down grading proposals during evaluation would be that the "key members of an offeror's proposed performance team do not possess the minimum qualifications set forth herein." The protester proposed to employ a Senior Logistician who lacked a bachelor's degree and was down graded accordingly.

The Navy's evaluators expressed concern that Value Engineering's proposed wage rates in three labor categories were below those at which persons with the skills required could be hired. However, the evaluators observed, for example, that Value Engineering's Technician labor rate was below that of clerk typist, which was considered unrealistic. Moreover, they concluded that low labor rates in these categories would lead to a high turnover of personnel, thereby requiring additional training, rework, and an ultimate increase in cost.

It is apparently Value Engineering's position that it should have been given the opportunity within the negotiation process to convince the contracting agency that its proposed labor rates were reasonable, and that the agency's fears that qualified personnel could not be obtained or retained at those rates were unjustified. While we agree that ASPR § 3-805 contemplates that such an opportunity should have been afforded to Value Engineering, we note that the evaluators' relatively low rating as to Value Engineering's personnel qualifications was justified partly by the insufficient experience qualifications of individuals proposed for Senior Logistician, Logistician/Technician, and Supply Specialist. It appears that any debate as to the reasonableness of its labor rates would not have had the effect of changing the contracting agency's evaluations of the personnel that Value Engineering proposed to use for this contract. Moreover, since Value Engineering was given a rating of 25 out of a possible 25 under the evaluation criteria of "Price", any discussion as to labor rates could not have benefited it on its rating under that criteria. Therefore, we are not prepared to conclude that the lack of negotiation as to labor rates so prejudiced Value Engineering that the award should be disturbed.

By letter of today we are bringing to the attention of the Secretary of the Navy the failure of the procuring activity to make independent cost projections and to discuss with the protester the reasonableness of its proposed labor rates.


Deputy Comptroller General
of the United States